**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIETGOAL INNOVATIONS LLC,	§	
	§	
Plaintiff,	§	Case No. 2:11-cv-00418-DF
	§	
v.	§	Jury Trial Demanded
	§	
ARBY'S RESTAURANT GROUP, INC., ET AL.	§	
	§	
Defendants.	§	

DOMINO'S ANSWER AND AFFIRMATIVE DEFENSES

Domino's Pizza, Inc. ("Domino's") submits its Answer, Affirmative Defenses and Counterclaims to DietGoal Innovation, LLC's ("DietGoal") Second Amended Complaint, and states as follows:

PARTIES

1-44. Domino's is without sufficient information or knowledge to either admit or deny the allegations in paragraphs 1-44 and therefore denies the same.

45. Domino's admits that it has a place of business in Ann Arbor, Michigan, but denied that it was organized under the laws of the State Michigan.

46. Domino's is without sufficient information or knowledge to either admit or deny the allegations in paragraph 46 and therefore denies the same.

JURISDICTION AND VENUE

47. Domino's admits that Plaintiff is alleging patent infringement in this action.

48. Admitted.

49. Domino's admits that it is subject to specific personal jurisdiction in this case under the Texas long-arm statute but denied the remaining allegations of paragraph 49.

50. Denied. Domino's asserts that this case should be transferred under 17 U.S.C. §1404(a) to the Eastern District of Michigan.

THE PATENT-IN-SUIT

51. Domino's admits that the United States Patent and Trademark Office issued U.S. Patent No 6,585,516 (the "'516 patent") but is without knowledge to either admit or deny whether Exhibit A is a true copy.

52. Domino's is without sufficient information or knowledge to either admit or deny the allegations in paragraph 52 and therefore denies the same.

CLAIM I
INFRINGEMENT OF U.S. PATENT NO. 6,585,516

53-95. Domino's is without sufficient information or knowledge to either admit or deny the allegations in paragraphs 53-95 and therefore denies the same.

96. Denied.

97. Domino's is without sufficient information or knowledge to either admit or deny the allegations in paragraph 97 and therefore denies the same.

98. To the extent the allegations in paragraph 98 relate to Domino's, Domino's denies them. To the extent the allegations in paragraph 98 relate to the other Defendants in this case, Domino's is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

99. Paragraph 99 states a legal conclusion which Domino's contends does not require a response. To the extent it requires a response; Domino's is without sufficient information or knowledge to either admit or deny the allegations in paragraph 99 and therefore denies the same.

100. Denied.

DEMAND FOR JURY TRIAL

101. Domino's also demands a trial by jury.

PRAYER FOR RELIEF

Domino's denies that DietGoal is entitled to anything requested in the Complaint's "Prayer for Relief," including subsections (1)-(6), to the extent that any of the requests are directed at Domino's. And Domino's is without knowledge or information sufficient to form a belief as to the merits of the remaining requests pending further investigation and/or a more definite statement.

DENIAL OF ANY REMAINING ALLEGATIONS

Except as specifically admitted herein, Domino's denies any remaining allegations in DietGoal's Second Amended Complaint that are directed at Domino's.

AFFIRMATIVE DEFENSES

Domino's asserts the following affirmative defenses:

First Affirmative Defense
(No Infringement)

Domino's does not infringe and has not infringed any valid and enforceable claim of the '516 patent.

Second Affirmative Defense
(Invalidity)

Claims of the '516 patent are invalid for failure to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including without limitation Sections 101, 102, 103 and 112.

Third Affirmative Defense
(Failure To State A Claim)

DietGoal's claims for relief fail to state a claim upon which relief can be granted.

Fourth Affirmative Defense
(Laches)

DietGoal's claims are barred in whole or in part by laches.

Fifth Affirmative Defense
(Unclean Hands)

DietGoal's claims are barred in whole or in part by the doctrine of unclean hands.

Sixth Affirmative Defense
(Estoppel)

DietGoal's claims are barred in whole or in part by estoppel.

Seventh Affirmative Defense
(Notice, Damages, and Costs)

DietGoal's claims for damages, if any, against Domino's are statutorily limited by 35 U.S.C. §§ 286, 287 and 288.

Eighth Affirmative Defense
(Improper Joinder)

Some or all of the Defendants have been improperly joined in a single action, and Domino's asserts its right to a separate trial.

Ninth Affirmative Defense
(Lack of Standing)

DietGoal's claims are barred due to lack of standing and/or lack of ownership to the extent DietGoal's allegations extend beyond the patent rights owned by DietGoal.

Tenth Affirmative Defense
(Improper Venue)

The Eastern District of Texas is not the proper forum for convenience pursuant to 28 U.S.C. § 1404. Domino's contends that the proper forum in the Eastern District of Michigan.

Eleventh Affirmative Defense
(Reservation of Affirmative Defenses)

Domino's hereby reserves the right to supplement additional affirmative defenses as discovery proceeds in this case.

DOMINO'S PRAYER FOR RELIEF

Domino's respectfully requests a judgment against DietGoal as follows:

A. that Domino's does not infringe and has not infringed any valid and enforceable claim of the '516 patent;

B. that the '516 patent is invalid;

C. that DietGoal take nothing by its Complaint against Domino's;

D. that the Court enters a judgment against DietGoal and in favor of Domino's and that DietGoal's Complaint is dismissed with prejudice;

E. that the Court enter a judgment that this is an exceptional case under 35 U.S.C. § 285 and enter a judgment awarding Domino's its costs and reasonable attorney fees; and

F. that the Court grants Domino's whatever further relief the Court may deem just and proper.

Dated: January 13, 2012

Respectfully submitted,

BROOKS KUSHMAN P.C.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on January 13, 2012, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Texas using the ECF System which will send notification of such filing to counsel for record.

I also certify that I have mailed by United States Postal Service the paper to the following non-participants in the ECF System: None.

By: /s/ Frank A. Angileri

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